

1 Tamie Richardson
2 746 Bailey Drive
3 Grants Pass OR 97527

FILED 10 OCT 1 11:31 USDC-ORH

4 UNITED STATES DISTRICT COURT
5 DISTRICT OF OREGON

Tamie Richardson

Case # **10-0373 PA**

Plaintiff,

vs.

PLAINTIFFS RESPONSE

First Horizon Home Loan Corp

TO RULE 12

Defendant

6 Date: October 1, 2010

7
8 (1) The Plaintiff, in her Original Petition, plead that Defendant charged false fees as
9 stipulated to Plaintiff as listed on the HUD 1 Settlement Statement, included as EXHIBIT
10 1. Plaintiff specifically plead that Defendant, at the time of settlement of the contract,
11 Defendant failed to provide documentation to establish that said fees were not included in
12 those fees expressly addressed by the Real Estate Settlement Procedures Act as forbidden
13 to be charged to Plaintiff at settlement.

14 (2) Plaintiff stipulated each fee charged with particularity. Plaintiff calculated the precise
15 amount that Plaintiff would have overpaid the note had Plaintiff paid off the note as
16 stipulated by the Truth In Lending Statement provided by Defendant as EXHIBIT 2.
17 Plaintiff specifically alleged that said fees were fraudulent. Plaintiff alleged that
18 Defendant failed to provide full disclosure by failing to provide documentation to prove
19 that the above fees were authorized by law, that the services alleged provided were
20 necessary, that the amount charged for each service was necessary, and that Defendant
21 did not take an undisclosed markup on said fees.

22 (3) Plaintiff further alleged that Defendant, acting in concert and collusion with the loan
23 broker, toward the perpetration of a carefully contrived connivance, provided the
24 amounts listed in the HUD 1 Settlement Statement, to the loan broker as an undisclosed
25 yield spread premium. Said undisclosed yield spread premium is alleged to be in
26 addition to the one percent loan origination fee, charged to Plaintiff, as allowed by law.

Plaintiff alleged that said payment to the broker of undisclosed yield spread premium was a predicate act intended to improperly influence loan broker to misrepresent facts to Plaintiff, to give partial disclosure of those facts which would appear favorable to the intent of the loan broker, while failing to give full disclosure of other facts that would not seem favorable to the contract.

(4) By the above, Plaintiff stated a claim for which recovery could be had, and therefore, Defendant's motion to dismiss is frivolous. Plaintiff moves the court to deny Defendant's pleading, or, in the alternative, treat Defendant's pleading as a request for more definite statement, in which case, Plaintiff will provide a more definite statement as requested.

(5) Further, Plaintiff moves the court to order sanctions against Defendant for filing a frivolous pleading and for failing to speak with candor to the court as Defendant is totally inept or acted with deliberate intent to improperly influence the court with false pleadings.

PLAINTIFF MADE CLAIMS WITH SPECIFICITY AND PARTICULARITY

(6) Plaintiffs alleged that the original lender overpaid the loan originator, with fees improperly charged to Plaintiff at closing in order to induce the originator of the loan to breach his fiduciary duty to Plaintiff. By doing this, they committed common law fraud by making false statements to Plaintiff in order to convince Plaintiff that Plaintiff only qualified for a more expensive loan product than Plaintiff actually qualified for. Plaintiff is prepared to prove up said claims after discovery, at a trial on the merits.

(7) Plaintiff alleged that Defendant(s) made partial disclosure of alleged facts concerning the conditions of the loan which is the basis for the issuance of the security instrument and lien document at issue. Plaintiff is prepared to prove at trial, after complete discovery that Defendant(s) failed to give full disclosure of facts that, if disclosed would have caused Plaintiff to make a different decision than the one made.

(8) Plaintiff alleged that the trustee, at closing, executed a carefully contrived connivance intended to apply undue pressure on Plaintiff in an effort to effect lack of full disclosure to Plaintiff and induce Plaintiff to enter into a contract without said full disclosure. Plaintiff is prepared to provide proof, at trial, sufficient to convince a jury.

(9) Plaintiff alleges that, at closing, false fees were charged to Plaintiff by lender. Said allegations are reiterated below with specificity. Plaintiff alleged that the original lender sold the security instrument immediately after closing, but failed to transfer the lien

document to the purchaser of said security instrument. Plaintiff is prepared to prove, subsequent to discovery, that the lender, while still holding the security instrument, received consideration and, therefore, could not be harmed rendering the lien unenforceable.

(10) Plaintiff alleged, and is prepared to prove at trial, that the lender maintained possession of the lien document in order to be able to file an IRS Form 1099a and write the entire amount of the original note off lender's capital gains tax and, thereby, receive consideration a second time.

(11) Plaintiff alleged, and is prepared to prove at trial that, the original security instrument, if said instrument still exists, may give the holder a claim against the signator, but have no claim against the property.

(12) Plaintiff alleged, and is prepared to prove at trial that, First Horizon Home Loan Corp, and the attorneys claiming to represent same, have committed fraud by representing to the court that First Horizon Home Loan Corp is as real party in interest in the contract of sale and has standing to take said property from defendant when no such claim exists.

(13) Plaintiff has alleged, and is prepared to prove at trial, that the defendant(s), by claiming standing to express the provisions of the contract of sale and lien, claim to be real parties in interest and, therefore, under the Federal Trade Commission Holder Rule 16 CFR 433, are subject to any claim Plaintiff may have against the original lender.

A. LENDER CHARGED FALSE FEES

(14) Lender charged fees to Plaintiff that were in violation of the limitations imposed by the Real Estate Settlement Procedures Act as said fees were simply contrived and not paid to a third party vendor.

(15) Lender charged other fees that were a normal part of doing business and should have been included in the finance charge.

(16) Below is a listing of the fees charged at settlement. Neither at settlement, nor at any other time did Lender or Trustee provide documentation to show that the fees herein listed were valid, necessary, reasonable, and proper to charge Petitioner.

801 Loan Origination Fee	\$3,700.00
803 Appraisal	\$800.00
804 Credit Report	\$18.00
805 Lender's Inspection Fee	\$695.00
808 First Horizon Hoam Loan	\$50.00
809 Total Mortgage Sol	\$90.00
810 Federal Flood	\$24.00
811 Review Fee	\$65.00
812 Action Brokerage Services	\$395.00
813 Postage	\$25.00
902 Mortgage Insurance Premium	\$867.43
1101 Settlement fee	\$470.00
1109 Lender's Coverage	\$1,035.50
1112 Title Charges from Page 3 line 1123	\$270.00
1113 Basic Charges	\$50.00
1201 Recording Fee	\$111.00
1205 Transfer Charges	\$62.00
1303 Tracking & Reconveyance Service	\$116.00
1304 Grants Pass Irrigation District	\$117.00

(17) Debtor is unable to determine whether or not the above fees are valid in accordance with the restrictions provided by the various consumer protection laws. Therefore it was demanded to please provide;

- a. a complete billing from each vendor who provided the above listed services;
- b. the complete contact information for each vendor who provided a billed service;
- c. clearly stipulate as to the specific service performed;
- d. a showing that said service was necessary;
- e. a showing that the cost of said service is reasonable;

f. a showing of why said service is not a regular cost of doing business that should rightly be included in the finance charge.

(18) The above charges have been disputed and deemed unreasonable until such time as said charges have been demonstrated to be reasonable, necessary, and in accordance with the limitations and restrictions included in any and all laws, rules, and regulations intended to protect the consumer.

(19) In the event lender fails to properly document the above charges, borrower will consider same as false charges. The effect of the above amounts that borrower would pay over the life of the note will be an overpayment of \$105,400.31. This amount will be reduced by the amount of items above when said items are fully documented.

B. RESPA PENALTIES

(20) From a cursory examination of the records, with the few available, the apparent RESPA violations are as follows:

- a. Good Faith Estimate not within limits
- b. No HUD-1 Booklet
- c. Truth In Lending Statement not within limits compared to Note
- d. Truth in Lending Statement not timely presented
- e. HUD-1 not presented at least one day before closing
- f. No Holder Rule Notice in Note
- g. No 1st Payment Letter
 - 1. No signed and dated :
 - 2. Financial Privacy Act Disclosure;
 - 3. Equal Credit Reporting Act Disclosure;
 - 4. notice of right to receive appraisal report;
 - 5. servicing disclosure statement;

6. borrower's Certification of Authorization;
7. notice of credit score;
8. RESPA servicing disclosure letter;
9. loan discount fee disclosure;
10. business insurance company arrangement disclosure;
11. notice of right to rescind.

(21) The courts have held that the borrower does not have to show harm to claim a violation of the Real Estate Settlement Procedures Act, as the Act was intended to insure strict compliance. And, in as much as the courts are directed to assess a penalty of no less than two hundred dollars and no more than two thousand, considering the large number enumerated here, it is reasonable to consider that the court will assess the maximum amount for each violation.

(22) Since the courts have held that the penalty for a violation of RESPA accrues at consummation of the note, borrower has calculated that, the number of violations found in a cursory examination of the note, if deducted from the principal, would result in an overpayment on the part of the borrower, over the life of the note, of \$212,802.57.

(23) If the violation penalty amounts for each of the unsupported fees listed above are included, the amount by which the borrower would be defrauded is \$206,133.07

(24) Adding in RESPA penalties for all the unsupported settlement fees along with the TILA/Note variance, it appears that lender intended to defraud borrower in the amount of \$584,354.86

MORE DEFINITE STATEMENT

(26) Plaintiff is willing to prepare a more definite statement for the court. Subsequent to the filing of the original complaint, Plaintiff has made inquiry and found evidence of knowing and deliberate criminal acts by lenders intended to defraud Plaintiff of Plaintiff's property and is prepared to file a more definite statement with the court.

CONCLUSION

(27) Plaintiff maintains that Defendant(s) motion of dismissal is frivolous and that counsel, in making said claim, has failed to speak with candor with the court. Plaintiff moves the court for sanctions against counsel, which is included as a separate motion, and to deny counsel's motion to dismiss.

Respectfully Submitted,


Tamie Richardson

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that a true and exact copy of the above has been furnished by

184

U.S. Mail on this 15th day of October, 2010 to the following:

185

Mr Holger Uhl

186

McCarthy & Holthus, LLP

187

19735 10th Avenue NE< Ste N200

188

Poulsbo, WA 98370

189

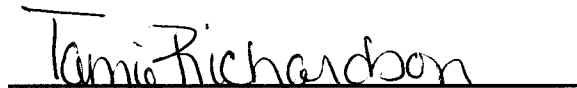
Attorneys for First Horizon Home Loan Corp

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A handwritten signature in black ink, reading "Tamie Richardson", is written over a solid black horizontal line.

194

Tamie Richardson

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ENT STATEMENT

TICOR TITLETM

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FMHA	3. <input type="checkbox"/> CONV. UNINS.
4. <input type="checkbox"/> VA	5. <input checked="" type="checkbox"/> CONV. INS.	6. <input type="checkbox"/> OTHER
6. File Number 26-48832		7. Loan Number 0052773397
8. Mortgage Ins. Case No.		

PARTMENT OF HOUSING AND URBAN DEVELOPMENT

This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(P.O.C.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

ID ADDRESS OF BORROWER: Mike A. Richardson and Tamie S. Richardson
1429 Golden Park Dr.
Grants Pass, OR 97527

DDRESS AND TIN OF SELLER:

ID ADDRESS OF LENDER: First Horizon Home Loan Corporation
4949 Meadows Road, Suite 350
Lake Oswego, OR 97035

Y LOCATION: 746 Bailey Drive
Grants Pass, OR 97527

ENT AGENT: Ticor Title (541)476-1171
744 NE 7th Street, PO Box 1960, Grants Pass, OR 97526-0167

7 SETTLEMENT: 744 NE 7th Street, PO Box 1960, Grants Pass, OR 97526-0167

ENT DATE 04/18/2005 ESTIMATED DISBURSEMENT DATE

SUMMARY OF BORROWER'S TRANSACTION

les	
to	
cha. to borrower (line 1400)	18,359.43
on Home Loan Corporation	94,275.21
on Hold back First Horizon Ho	224,365.36
ts for items paid by seller in advance	
taxes to	
es to	
ts to	
hold for FHHLC First Horizon Ho	33,000.00

AMOUNT DUE FROM BORROWER	370,000.00
earnest money	
ount of new loan	370,000.00
in taken subject to	

K SUMMARY OF SELLER'S TRANSACTION

401. Contract sales price	
402. Personal Property	
403.	
404.	
405.	
Adjustments for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
413.	
414.	
415.	
416.	
420. GROSS AMOUNT DUE TO SELLER	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan taken subject to	
504. Payoff first mortgage	
505. Payoff second mortgage	
506.	
507.	
508.	
509.	

Adjustments for items unpaid by seller

Taxes			510. City/town taxes	to	
to			511. County taxes	to	
to			512. Assessments	to	
to			513.		
			514.		
			515.		
			516.		
			517.		
			518.		
			519.		
PAID BY/FOR BORROWER	370,000.00		520. TOTAL REDUCTION AMOUNT DUE SELLER		
Amount due from borrower (line 120)	370,000.00		601. Gross amount due to seller (line 420)		
Amounts paid by/for borrower (line 220)	370,000.00		602. Less reductions in amount due seller (line 520)		
(FROM) (TO) BORROWER			603. CASH (FROM) (TO) SELLER		

A, HR 4305.2

Page 2 of 3

Form Approved OMB 2502-0265

SETTLEMENT CHARGES

NET PRICE \$ @ % =			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT	
of Commission (line 700) as follows: to to					
n paid at Settlement					
nation Fee	1.00	%	Action Brokerage Services	3,700.00	
ount		%			
Fee			Action Brokerage Services	800.00	
ort to			Action Brokerage Services	18.00	
			First Horizon Home Loan Corporation	695.00	
nsurance Application Fee to					
1 Fee to			First Horizon Home Loan Corporation	50.00	
e Fee			Total Mortgage Sol	90.00	
ermination			Federal Flood	24.00	
Review Fee			First Horizon Home Loan Corporation	65.00	
; Fee			Action Brokerage Services	395.00	
Postage			Action Brokerage Services	25.00	
(line 822)				9,327.50	
m	to	@	/day (-days)		
nsurance Premium for					
nsurance Premium for	1	year to	Farmers Insurance	867.43	
ir	months @ \$		per month		
isl	months @ \$		per month		
y taxes	months @ \$		per month		
erty taxes	months @ \$		per month		
ssments	months @ \$		per month		
or closing fee to			Ticor Title	470.00	
title search to					
ation to					
ice binder to					
eparation to					
o					
ee to					
ove items numbers:	1103, 1104)		
ce to			Ticor Title	1,035.50	
ove items numbers:	1103, 1105)		
verage	\$ 370,000.00		\$ 1,035.50		
verage	\$		\$		
verage En			Ticor Title	50.00	
ntal Protec			Ticor Title		
(line 1123)				270.00	
Deed \$			Mortgage \$ 111.00		
tax			Release \$	111.00	
mp	Deed \$		Mortgage \$		
mp	Deed \$		Mortgage \$		
1 Agreement			Ticor Title	21.00	
(line 1209)				62.00	

Adjusted at close	Title	50.00	
	Oregon Tracking and Reconveyance Servi	116.00	
	Grants Pass Irrigation District	117.00	
TOTAL SETTLEMENT CHARGES	(enter on lines 103, Section J and 502, Section K)	18,359.43	

I, the undersigned, being a duly qualified Settlement Agent, certify that the foregoing is a true and accurate statement of all receipts and disbursements made on my transaction. I further certify that I have received a copy of HUD-1 Settlement Statement.

OR

I, the undersigned, being a duly qualified Settlement Agent, certify that the foregoing is a true and accurate account of the funds which were received and have been or will be disbursed on my behalf, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed on my behalf of the settlement of this transaction.

Date

I do not knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. U.S. Code Sections 1001 and Section 1010.

PA, HR 4305.2

Page 3 of 3

Form Approved OMB 2502-0265

332

Loan No. 0052773397

	First Horizon Home Loan Corporation		
oft cost draw	Systems Inc.	9,465.00	
	First Horizon Home Loan Corporation	100.00	
	First Horizon Home Loan Corporation	600.00	
on fee	First Horizon Home Loan Corporation	100.00	
edit towards closing costs	First Horizon Home Loan Corporation	937.50	
ntered on line 814 Section L)		9,327.50	
f Improvem	Ticor Title		
a of Excep	Ticor Title	50.00	
a of Excep	Ticor Title	50.00	
Fee	Ticor Title	75.00	
Lien Searc	Ticor Title	25.00	
ncoming)	Ticor Title	15.00	
Postage Fee	Ticor Title	30.00	
ument Fee	Ticor Title	25.00	
ntered on line 1113 Section L)		270.00	
ification Agreement	Ticor Title	41.00	
pletion Notice	Ticor Title	21.00	
ntered on line 1205 Section L)		62.00	

the HUD-1 Settlement Statement and, to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my transaction, I further certify that I have received a copy of HUD-1 Settlement Statement.

Exhibit

TRUTH IN LENDING DISCLOSURE STATEMENT

ACTION BROKERAGE SERVICES, INC.

Creditor ACTION BROKERAGE SERVICES, INC. 1012 E. JACKSON STREET MEDFORD, OR 97504	Applicant(s) Mike A. Richardson Tamie Richardson
Mailing Address Mike A. Richardson 1173 Westerly Court Grants Pass, OR 97527	Property Address 746 Bailey Drive Grants Pass, OR 97527
Loan Number 99-0808	Preparation Date January 20, 2005

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 5.866 %	FINANCE CHARGE The dollar amount the credit will cost you. \$ 388,878.55	Amount Financed The amount of credit provided to you or on your behalf. \$ 345,840.00	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ 734,718.55
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PAYMENT SCHEDULE:[illegible]

* Includes mortgage insurance premiums, excludes taxes, hazard insurance or flood insurance.

DEMAND FEATURE: ☒ This loan does not have a Demand Feature ☐ This loan has a Demand Feature.

ITEMIZATION: You have a right at this time to an ITEMIZATION OF AMOUNT FINANCED.

I/We ☐ do ☒ do not want an itemization.

REQUIRED DEPOSIT:

☒ The annual percentage rate does not take into account your required deposit.

VARIABLE RATE FEATURE:

☐ This Loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in:

746 Bailey Drive, Grants Pass OR 97527

ASSUMPTION: Someone buying this property

☒ cannot assume the remaining balance due under original mortgage terms.

☐ may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

'LING / RECORDING FEES:	\$	165.00
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PROPERTY INSURANCE:

☐ Property / hazard insurance is a required condition of this loan. Borrower may purchase this insurance from any insurance company acceptable to the lender.

Hazard insurance ☐ is ☒ is not available through the lender at an estimated cost of _____ for a _____ month term.

LATE CHARGES: If your payment is more than _____ days late, you will be charged a late charge of _____ % of the overdue payment.

PREPAYMENT: If you prepay this loan in full or in part, you
☒ may ☐ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and payment refunds and penalties.

I/We hereby acknowledge reading and receiving a complete copy of this disclosure. I/We understand there is no commitment for the creditor to make this loan and there is no obligation for me/us to accept this loan upon delivery or signing of this disclosure.

Mike A. Richardson

Date

Tamie Richardson

Date

Date

Date

LATE CHARGES: If your payment is more than **15** days late, you will be charged a late charge of **5.00** % of the overdue payment.

PREPAYMENT: If you pay off your loan early, you

☐ may ☒ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.
e means estimate

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

MIKE A RICHARDSON

BORROWER/DATE

TAMIE S RICHARDSON

BORROWER/DATE

BORROWER/DATE

BORROWER/DATE